

SENATE BILL 1368
By Crutchfield

AN ACT to amend Tennessee Code Annotated, Title 49 and Title 67, Chapter 4, relative to franchise and excise tax incentives for contributions for educational and low-income housing purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2009, is amended by adding the following new subdivision:

(10)

(A) The purpose of this subdivision is to:

(i) Encourage private, voluntary contributions to nonprofit scholarship-funding organization,

(ii) Expand educational opportunities for children of families that have limited financial resources; and

(iii) Enable children in this state to achieve a greater level of excellence in their education.

(B) As used in this subdivision, unless the context otherwise requires:

(i) "Department" means the department of revenue;

(ii) "Eligible contribution" shall have the same meaning as provided in § 49-4-901;

(iii) "Eligible nonpublic school" shall have the same meaning as provided in § 49-4-901;

(iv) "Eligible nonprofit scholarship-funding organization" shall have the same meaning as provided in § 49-4-901; and

(v) "Qualified student" shall have the same meaning as provided in § 49-4-901.

(C)

(i) There is allowed a credit of one hundred percent (100%) of an eligible contribution against any tax due for a taxable year under this part; provided, that such credit, in combination with any other credits, shall not exceed twenty-five percent (25%) of the tax due under this part for the taxable year.

(ii) The taxpayer making the contribution shall not designate a specific child as the beneficiary of the contribution. The taxpayer shall not contribute more than five million dollars (\$5,000,000) to any single eligible nonprofit scholarship-funding organization.

(iii) The credit granted by this subdivision shall be reduced by the difference between the amount of federal corporate income tax taking into account the credit granted by this subdivision and the amount of federal corporate income tax without application of the credit granted by this subdivision.

(D) The department of revenue is authorized to share with the department of education information necessary to effectuate the purposes of this subdivision. Except as expressly provided in title 49, chapter 4, part 9, the department of education shall be bound by restrictions on disclosure of such information otherwise applicable to the department of revenue.

(E) Any unused amount of credit authorized by this subdivision that is not used in any one (1) year shall not be carried forward. A taxpayer shall not convey, assign or transfer the credit authorized by this subdivision to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction.

(F) An application for credit pursuant to this subdivision shall be submitted to the department of revenue on forms established by the department.

SECTION 2. Tennessee Code Annotated, Title 49, Chapter 4, is amended by adding the following new part:

49-4-901. As used in this part, unless the context otherwise requires:

(1) "Department" means the department of education;

(2) "Eligible contribution" means a monetary contribution from a taxpayer, subject to the restrictions provided in this part and in § 67-4-2009, to an eligible nonprofit scholarship-funding organization;

(3) "Eligible nonpublic school" means a nonpublic school located in this state that offers an education to students in grades k-12 and that meets the requirements of this part;

(4) "Eligible nonprofit scholarship-funding organization" means a charitable organization that is exempt from federal income tax pursuant to § 501(c)(3) of the Internal Revenue Code and that complies with the requirements of this part; and

(5) "Qualified student" means a student who qualifies for free or reduced-price school lunches under the National School Lunch Act and who:

(A) Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding; or

(B) Received a scholarship from an eligible nonprofit scholarship-funding organization during the previous school year.

49-4-902.

(a) An eligible nonprofit scholarship-funding organization shall provide scholarships, from eligible contributions, to qualified students for:

(1) Tuition or textbook expenses for, or transportation to, an eligible nonpublic school. At least seventy-five percent (75%) of the scholarship funding shall be used to pay tuition expenses; or

(2) Transportation to a Tennessee public school that is located outside the district in which the student resides.

(b) An eligible nonprofit scholarship-funding organization shall give priority to qualified students who received a scholarship from an eligible nonprofit scholarship-funding organization during the previous school year.

(c) The amount of a scholarship provided to any child for any single school year by all eligible nonprofit scholarship-funding organizations from eligible contributions shall not exceed the following annual limits:

(1) Three thousand five hundred dollars (\$3,500) for a scholarship awarded to a student enrolled in an eligible nonpublic school; or

(2) Five hundred dollars (\$500) for a scholarship awarded to a student enrolled in a Tennessee public school that is located outside the district in which the student resides.

(d) The amount of an eligible contribution that may be accepted by an eligible nonprofit scholarship-funding organization is limited to the amount needed to provide scholarships for qualified students that the organization has identified and for which vacancies in eligible nonpublic schools have been identified.

(e) An eligible nonprofit scholarship-funding organization that receives an eligible contribution must spend one hundred percent (100%) of the eligible

contribution to provide scholarships not later than twelve (12) months from the date the contribution was received. No portion of eligible contributions shall be used for administrative expenses. All interest accrued from contributions shall be used for scholarships.

(f) An eligible nonprofit scholarship-funding organization that receives eligible contributions shall provide to the comptroller of the treasury an annual financial and compliance audit of its accounts and records conducted by an independent certified public accountant in accordance with rules promulgated by the comptroller of the treasury.

(g) Payment of the scholarship by the eligible nonprofit scholarship-funding organization shall be by individual warrant or check made payable to the student's legal guardian. If such legal guardian chooses for the child to attend an eligible nonpublic school, the warrant or check shall be mailed by the eligible nonprofit scholarship-funding organization to the nonpublic school of the guardian's choice, and the guardian shall restrictively endorse the warrant or check to the nonpublic school. An eligible nonprofit scholarship-funding organization shall ensure that, upon receipt of a scholarship warrant or check, the guardian to whom the warrant or check is made restrictively endorses the warrant or check to the nonpublic school of the guardian's choice for deposit into the account of the nonpublic school.

(h) Each eligible nonprofit scholarship-funding organization shall furnish annually to the department of education a list of its current owners, address, and proof of its tax-exempt status under § 501(c)(3) of the Internal Revenue Code. The department shall maintain a public register of all such organizations and shall post such register on its website. Not later than March 15 of each year, the department of education shall furnish the department of revenue a list of eligible

nonprofit scholarship-funding organizations that meet the requirements of this part. The department of education shall monitor the eligibility of nonprofit scholarship-funding organizations and shall monitor the eligibility of expenditures under this part.

49-4-903. An eligible nonpublic school shall:

(1) Demonstrate fiscal soundness by being in operation for one (1) school year or provide the department with a statement by a certified public accountant confirming that the nonpublic school desiring to participate is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming year serving the number of students anticipated with expected revenues from tuition and other sources that reasonably may be expected. In lieu of such statement, a surety bond or letter of credit for the amount equal to the scholarship funds for any quarter shall be filed with the department;

(2) Comply with the anti-discrimination provisions of 42 U.S.C. § 2000d;

(3) Comply with all applicable state and local health and safety laws and codes;

(4) Comply with all state laws relating to general regulation of nonpublic schools;

(5)

(A) Be properly accredited by the southern association of colleges and schools; or

(B) If not accredited, receive annual written certification from the department that such school's physical facilities, administrators, teachers, and curriculum provide an education at least equivalent to the minimum requirements of public schools in Tennessee.

(6) Furnish annually a written copy of the accreditation or certification required by subsection (e) to each organization registered with the department under § 49-4-902(h). The department shall monitor the eligibility of nonpublic schools that meet the requirements of this part.

49-9-904. The department shall cooperate with the department of revenue in the administration of this part and in the administration of the scholarship credit authorized under § 67-4-2009.

49-9-905. The department shall identify qualified students and, notwithstanding the provision of any law to the contrary, shall make such information available upon request to an eligible nonprofit scholarship-funding organization. Such organization shall use such information only for the purposes authorized in this part and in § 67-4-2009, and shall not sell, release, transfer, disclose, or make use of such information, directly or indirectly, for any other purpose. Violation of this section shall be grounds for determination by the department that such organization is ineligible for participation in this program for a period to be determined by the department. A proceeding for violation of this section shall be conducted as a contested case in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 3. The commissioner of revenue, the commissioner of education, and the comptroller of the treasury are authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 4. For purposes of promulgating rules and regulations, this act shall take effect upon becoming law. For all other purposes, this act shall take effect July 1, 2003, the public welfare requiring it, and shall apply to tax years beginning on or after January 1, 2004, the public welfare requiring it.